

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

AMELIA AGUILAR, individually and as guardian and next friend of minor child I.A.; JUAN DELGADO and MARIA GUTIERREZ, individually and as guardian and next friend of minor child N.D.G.; and TOSHA QUEVEDO individually and as guardian and next friend of minor child L.Q.,

Plaintiffs,

vs.

No. 1:23-cv-00819-DHU-SCY

JEREMIAH WHITAKER; DANA STANLEY,
Principal of Lydia Rippey Elementary
School; KEVIN SUMMERS, Superintendent
of Aztec Municipal School District; and
BOARD OF EDUCATION OF AZTEC MUNICIPAL
SCHOOL DISTRICT,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on (i) Plaintiffs’ Motion for Dismissal of Counts II, III, and IV Only Against Defendants Dana Stanley, Kevin Summers, and the Board of Education of Aztec Municipal School District (“the School Defendants”), Doc. 32, and (ii) the School Defendants’ Partial Motion for Judgment on the Pleadings Regarding Counts II, III, IV, and V. Doc. 24.

Plaintiffs are minor children and their guardians. They allege that a former elementary school teacher, Defendant Whitaker, sexually groomed students and that the School Defendants failed to take corrective action. Plaintiffs filed a six-count complaint against Whitaker and/or the School Defendants under Title IX of the Education Amendments Act of 1972 (“Title IX”), 20 U.S.C. § 1681 *et seq.* (Count I); New Mexico’s common-law of battery, false imprisonment, and intentional infliction of emotional distress (“IIED”) (Counts II, III, and IV, respectively); the New

Mexico Tort Claims Act (“NMTCA”), N.M. Stat. Ann. § 41–4–1 *et seq.* (Count V); and the New Mexico Civil Rights Act § 41–4A–1 *et seq.* (Count VII). *See* Doc. 1.

The School Defendants filed a Partial Motion for Judgment on the Pleadings Regarding Counts II, III, IV, and V. *See* Doc. 24. In response, Plaintiffs filed the current motion requesting dismissal “with prejudice as to [C]ounts II, III, and IV only”—i.e., their common-law claims for battery, false imprisonment, and IIED. Doc. 32. Plaintiffs note that “Counts I, V, and VI are not affected by [their requested] dismissal.” *Id.* The School Defendants respond that they “do not oppose dismissal with prejudice of Counts II, III, and IV against them.” Doc. 46.

Noting the parties’ agreement on the issue, the Court hereby dismisses with prejudice Counts II, III, and IV against the School Defendants.

In light of this dismissal, the Court further denies as moot the portion of the School Defendants’ Partial Motion for Judgment on the Pleadings Regarding Counts II, III, and IV. Doc. 24. As the School Defendants acknowledge, dismissing Counts II, III, and IV renders this motion partially moot. *See* Doc. 46 (School Defendants explaining that granting Plaintiffs’ motion to dismiss Counts II, III, and IV “would moot the Court’s need to make a decision on [those counts]”). However, this ruling does not affect the portion of the School Defendants’ request to dismiss Count V. Plaintiffs’ current motion never sought to dismiss Count V, and therefore that count remains pending, as does the School Defendants’ motion for judgment on the pleadings targeting Count V.

IT IS THEREFORE ORDERED that:

- Plaintiffs’ Motion for Dismissal of Counts II, III, and IV Only Against Defendants Dana Stanley, Kevin Summers, and the Board of Education of Aztec Municipal School District (**Doc. 32**) is **GRANTED** and that Counts II, III, and IV are **DISMISSED with**

prejudice against Defendants Stanley, Summers, and the Board of Education;
however, Counts I, V, and VI remain pending against these Defendants.

- Defendants Stanley, Summers, and the Board of Education's Partial Motion for Judgment on the Pleadings Regarding Counts II, III, IV, and V (**Doc. 24**) is **DENIED as MOOT** to the extent it seeks dismissal of Counts II, III, and IV; **however, these Defendants' request to dismiss Count V remains pending.**

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "David Herrera Urias", written in a cursive style.

HON. DAVID HERRERA URIAS
UNITED STATES DISTRICT JUDGE